

FILED

AUG 09 2011

PATRICK E. DUFFY, CLERK
By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

ANDREW HARDISON,)

Defendant.)

Cause No. CR 04-01-M-DWM

ORDER RECHARACTERIZING
AND DENYING MOTION

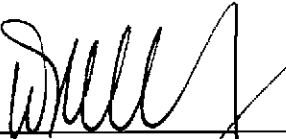
On July 21, 2011, Defendant Hardison submitted a letter asking for an explanation why he was not given credit against his federal sentence for time served in state custody on an offense taken into account as relevant conduct in fashioning his federal sentence. The letter was docketed as a motion to reduce sentence.

Although Hardison seems to be “just asking” why his sentence was not reduced under U.S.S.G. § 5G1.3(b), advisory opinions are prohibited by the United States Constitution’s “case or controversy” requirement. U.S. Const. Art. III, § 2, cl. 1; Kittel v. Thomas, 620 F.3d 949, 951-52 (9th Cir. 2010). Under Hardison’s circumstances, relief is not available. Once a sentence is imposed, a court’s authority

to alter it is limited. 18 U.S.C. § 3582(c). The Director of the Bureau of Prisons has not filed a motion to reduce Hardison's sentence. Id. § 3582(c)(1)(A). Hardison has not shown that the Sentencing Commission has lowered his guideline range. Id. § 3582(c)(2). More than fourteen days have passed since judgment was entered. Fed. R. Crim. P. 35(a). The United States has not filed a motion to reduce Hardison's sentence. Fed. R. Crim. P. 35(b). Hardison has already filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. The motion and a certificate of appealability were denied on March 20, 2009, and Hardison did not appeal. There is no "clerical error" in the sentence. Fed. R. Crim. P. 36; Order (doc. 41). The Court is not aware of any other statutory authority that authorizes a reduction of Hardison's sentence. 18 U.S.C. § 3582(c)(1)(B). The law does not permit the Court to alter Hardison's sentence at this time. Therefore, no advisory opinion will be rendered.

Accordingly, IT IS HEREBY ORDERED that Hardison's letter, construed as a motion to reduce the sentence (doc. 42), is DENIED.

DATED this 9th day of August, 2011.



Donald W. Molloy
United States District Court